IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.CJ.

APPEAL NO. 56 OF 2006
IN
CHAMBER SUMMONS NO.158 OF 2005
IN
SUIT NO.1228 OF 1985

Vasudev Babubhai Kocha and another .. Appellants
v/s.
Rasilaben Kantilal Kansara and others. .. Respondents

Mr. S.H. Doctor, senior counsel with Mr. Naushad Engineer and Ms. V.C. Khatri i/by M/s. Vijaykumar & Co. for the Appellants.

Mr. M.S. Doctor i/by M/s. B. Munim & Co. for the respondent No.1.

Mr. M.P.S. Rao with Ms. Sheetal Sampat and Mr. Mihir Mody i/by M/s. K. Ashar & Co. for the respondent Nos.2A to 2E.

CORAM : R.M.LODHA &
S.A.BOBDE, JJ.

DATED : 5TH SEPTEMBER, 2006.

P.C.

We heard Mr. S.H. Doctor, the senior counsel for the appellants, Mr. M.S. Doctor, the counsel for the respondent No.1 and Mr. M.P.S. Rao, the counsel for the respondent Nos.2A to 2E.

2. The only controversy in the appeal centres around the valuation of the factory building situate at P-1 Industrial Estate, Walbhat Road, Goregaon (East), Mumbai- one of the assets of the partnership firm M/s.Babubhai Narottamdas & Co.

3. That the notice for dissolution of partnership firm was given on 8th October, 1984 by respondent No.1 is not in dispute. However, in the facts and circumstances of the case what is required to be seen is whether the valuation of the aforesaid asset of the firm is to be reckoned as on 8th October, 1984 or any other date, particularly from the date of award dated 27th March, 2001.

4. The facts and the circumstances that need to be noticed briefly are thus-

The respondent No.1 filed suit before this court against the present appellants and the other respondents for a declaration that the partnership firm M/s.Babubhai Narottam & Co. was dissolved. By way of an interim order, the Court Receiver was appointed and the partners were allowed to carry on the partnership business as agents of the Court Receiver. The matter relating to the appointment of Court Receiver reached the Supreme Court. On 8th March, 1988, the Supreme Court passed the order interalia affirming the appointment of Court Receiver and further clarifying that all the parties shall continue as partners of the firm and they are entitled to sharing the profits of the firm run by the Receiver. The Supreme Court by consent of the parties appointed Mr. Y.V. Chandrachud, retired Chief Justice of the Supreme Court of India as the sole arbitrator to adjudicate the dispute between the parties.

5. The learned Arbitrator by his award dated 27th March, 2001 adjudicated the dispute and interalia concluded with respect to Goregaon factory that the Court Receiver shall have Goregaon factory valued as a going concern including the goodwill of the firm,

the land on which the factory stands, the plants and equipments of the factory and the fixtures appurtenant thereto. The learned Arbitrator further held that the respondents therein shall pay to the claimant (respondent No.1 herein) her share (24.25%) in the amount fixed by the valuer and thereupon use the Goregaon factory as an asset of the reconstituted firm and if the respondents therein were not willing or were unable to pay to the claimant (respondent No.1 herein) her 24.25 % share in the said amount, there will be no option with the Court Receiver but to advertise the sale of Goregaon factory in the same manner as the sale of Seagull flat. The learned Arbitrator at various places in the award has referred to the order passed by the Supreme Court on 8th March, 1988 directing that all the parties continue as partners of the firm and will be entitled to share the profits of the firm run by the Receiver.

6. That the appellants were well aware that the partnership is to dissolve on passing of the award on 27th March, 2001 is clear from one of the affidavits filed by the appellants in support of the chamber summons wherein it is stated thus-

> "By his award dated 27th March, 2001, the learned Arbitrator was pleased to dissolve the said partnership firm."

7. In the backdrop of these facts, the contention of the appellants that the partnership firm stood dissolved on 8th October, 1984 on receiving the notice from the present respondent No.1 (claimant) cannot be accepted. The dissolution of the partnership firm, in the peculiar facts noticed above, cannot be from 8th October, 1984 is clear from the position that in the order passed by

the Supreme Court on 8th March, 1988, it was directed that all the parties continue to be partners of the firm. If the partnership firm stood dissolved on 8th October, 1984, where was the question of the parties continuing as partners of the firm. The fact of the matter is that all the partners continued as partners until the award was passed by the Arbitrator on 27th March, 2001.

8. We have, thus, no hesitation in holding that in the facts and circumstances of the present case, the date of dissolution of the firm has to be treated as 27th March, 2001, the date on which the award came to be passed by the learned Arbitrator. In that view of the matter, the valuation of the Goregaon factory for the settlement of the accounts of the partnership firm has to be on the date the partnership firm stood dissolved i.e. 27th March, 2001.

9. In the case of N. Muhammad Usain Sahib and another v. S.N. Abdul Gaffoor Sahib and others, AIR 1950 Madras 758, relied upon by Mr. S. H. Doctor, senior counsel for the appellants, it has been held that the assets of the partnership firm have to be valued on the basis of the market value on the date of the dissolution.

10. The aforesaid legal position has been approved by the Supreme Court in the case of A.L.A. Firm v. Commissioner of Income Tax, 1991 (189) ITR, page 285 wherein the Supreme Court held thus-

> "We, however, find substance in the second consideration that prevailed with the High Court. The decision in Muhammad Ussain

Sahib v. S.N. Abdul Gaffoor Sahib, AIR 1950 Mad 758; [1950] 1 MLJ 81correctly sets out the mode of taking accounts regarding the assets of a firm. While the valuation of assets during the subsistence of the partnership would be immaterial and could even be notional, the position at the point of dissolution is totally different (at p. 759):

"But the situation is totally different when the firm is dissolved or when a partner retires. The settlement of his account must be not on a notional basis but on a real basis, that is every asset of the partnership should be converted into money and the account of each partner settled on that basis.... The assets have to be valued, of course, on the basis of the market value on the date of the dissolution....."

This applies equally well to assets which constitute stock-in-trade. There can be no manner of doubt that, in taking accounts for purposes of dissolution, the firm and the partners, being commercial men, would value the assets only on a real basis and not at cost or at their other value appearing in the books. A short passage from Pickles on Accountancy (Third Edn.), p. 650, will make this clear:

"In the event of the accounts being drawn up to the date of death or retirement, no departure from the normal procedure arises, but it will be necessary to see that every revaluation required by the terms of the partnership agreement is made. It has been laid down judicially that, in the absence of contrary agreement, all assets and liabilities must be taken at a `fair value' not merely a ` book value' basis, thus involving recording entries for both appreciation and depreciation of assets and liabilities. This rule is applicable, notwithstanding the omission of a particular item from the books, e.g., investments, goodwill (Cruikshank v. Sutherland [1992] 92 LJ Ch 136 (HL). Obviously, the net effect of the revaluation

will be a profit or loss divisible in the agreed profit or loss-sharing ratios."

11. The counsel for the respondent No.1, on instructions, submitted that the respondent No.1 agrees to the position that the valuation of Goregaon factory has to be done on the basis of the market value as on 27th March, 2001 i.e. the date on which the firm stood dissolved. He also submitted that the Court Receiver has already received the valuation of Goregaon factory from the valuer as on 27th March, 2001. In view thereof, obviously, the Court Receiver shall proceed with the finalisation of the accounts accordingly.

12. With the aforesaid clarification, the appeal is dismissed. Six weeks time is given to the appellants to exercise the option as per para 39 of the Award dated 27th March, 2001.

(R.M.LODHA, J.)

(S.A.BOBDE, J.)